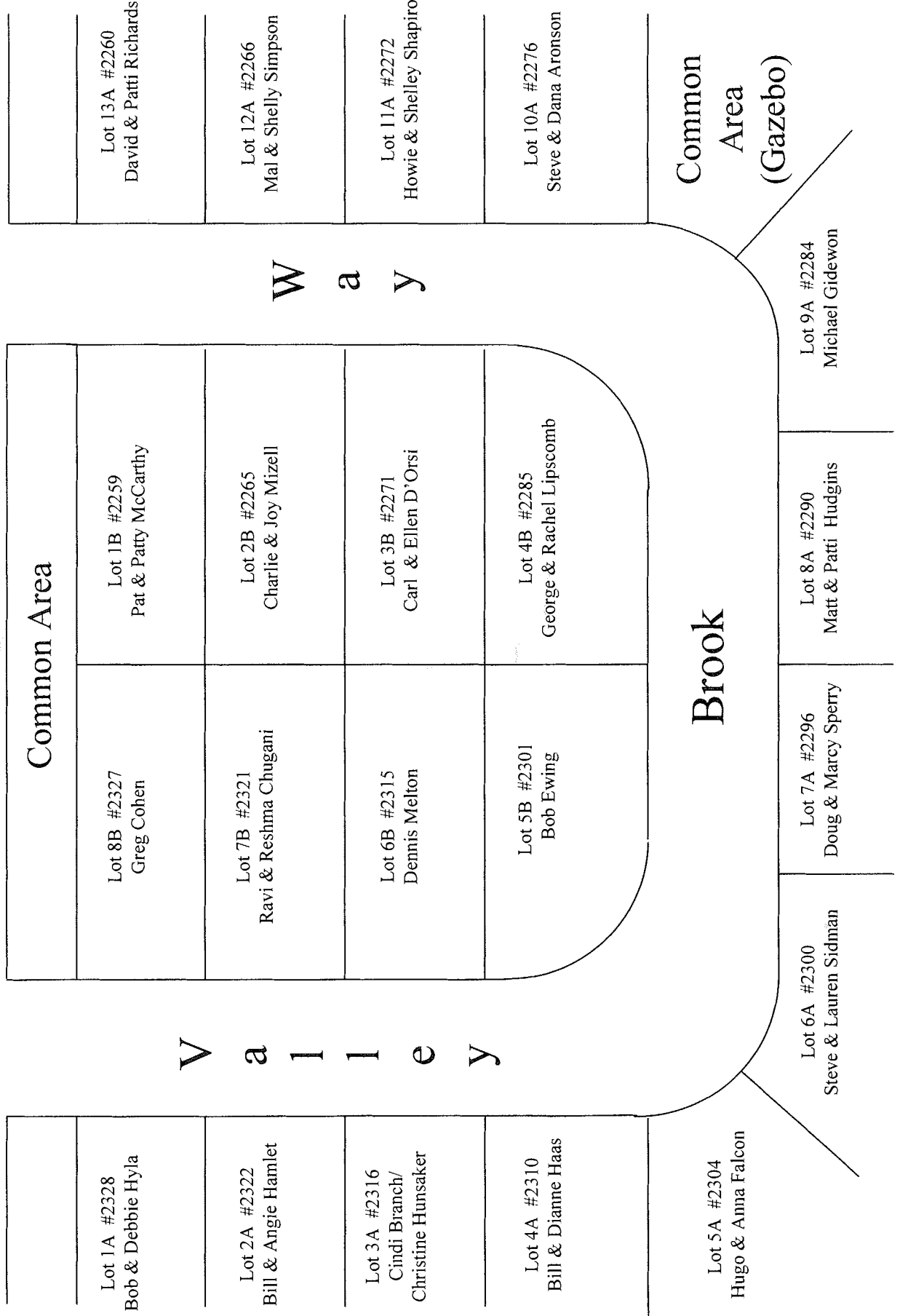


# Colonial Drive



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## By-Laws For Valley Brook

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### 3. MEMBERS

#### 3.1. Membership

Every person who shall own of record a fee interest or an undivided fee interest in any Lot shall automatically be a Member of the Association, excluding persons who own such interest under a mortgage or other security instrument by means of which title to the Lot is conveyed or encumbered to secure a debt. Such membership shall continue for so long as such ownership shall continue and shall terminate when such Member no longer owns such a fee interest of record. There shall be one (1) membership for each Lot.

#### 3.2. Voting Rights

The Association shall have two (2) classes of voting membership, and there shall be one (1) vote per Lot, as follows:

Class A. Class A Members shall be the Members, with the exception of Declarant.

Class B. Class B Member shall be Declarant.

On all matters upon which the Class A Members and the Class B Members are entitled to vote, each such Member shall be entitled to cast one (1) vote for each Lot in which he shall own of record a fee interest or an undivided fee interest. In no event shall more than one (1) vote be cast with respect to any Lot with multiple Owners and no vote shall be cast with respect to such Lot unless all the Owners of such Lot shall unanimously agree, and such unanimous agreement shall be presumed conclusively if any one of such Lot Owners shall purport to cast the vote of such Lot without protest being made forthwith by any other of the Lot Owners to the presiding officer of the meeting at which such vote is to be cast. If such protest is made, or if more than one (1) vote is cast with respect to the Lot, then the vote of such Lot shall not be counted. Provided further, that during any period in which a Member shall be in default in the payment of any amount due and owing the Association, the vote which is allocated to the Lot in which such Member owns a fee interest shall not be counted for any purpose.

#### 3.3. Regular Meetings

Regular meetings of the Members shall be deemed to have been held in accordance with the provisions of Section 4.05 of these By-Laws.

#### 3.4. Special Meetings

Special meetings of the Members shall be deemed to have been held in accordance with the provisions of Section 4.06 of these By-Laws.

### 4. BOARD OF DIRECTORS

#### 4.1. Number and qualifications

So long as Declarant owns a Lot, the affairs of the Association shall be governed by the Board of Directors which shall consist of one (1) individual elected by the Class B Member. At such time as Declarant no longer owns a Lot, the Board of Directors shall consist of the Class A Members.

#### 4.2. Voting

Each member of the Board of Directors (individually, a "Director") shall be entitled to cast one (1) vote. From and after the first meeting at which the Board of Directors is composed of the Class A Members, each Member shall be entitled to cast one (1) vote for each Lot in which he shall own of record a fee interest or an undivided fee interest. In no event, however, shall more than one (1) vote be cast with respect to any Lot. If more than one (1) person shall own of record a fee interest in any Lot, the vote with respect to such Lot shall be cast as such Lot Owners shall unanimously agree, and such unanimous agreement shall be presumed conclusively if any one of such Lot Owners shall purport to cast the vote of such Lot without protest being made forthwith by any other of the Lot Owners to the presiding officers of the meeting at which such vote is to be cast. If such protest is made, or if more than one (1) vote is cast with respect to the Lot, then the vote of such Lot shall not be counted. Provided further, that during any period in which a Member shall be in default in the payment of any amount due and owing the Association, the vote which is allocated to the Lot in which such Member owns a fee interest shall not be counted for any purpose.

**DECLARATION  
BY-LAWS OF VALLEY BROOK  
HOMEOWNER'S ASSOCIATION, INC.  
A Georgia Nonprofit Corporation**

**1. PURPOSE, OFFICES, FISCAL YEAR AND SEAL**

**1.1. Purpose**

These are the By-Laws of Valley Brook Homeowner's Association, a Georgia nonprofit corporation, hereinafter referred to as the "Association", which has been organized for the purpose of acquiring, constructing, maintaining and caring for the assets of the Association and engaging in all lawful activities incidental thereto.

**1.2. Offices**

The principal office of the Association shall be the address of its registered agent, who shall maintain a registered office in the State of Georgia, as such agent may be designated from time to time by the Board of Directors.

**1.3. Fiscal Year.**

The fiscal year of the Association shall be the calendar year.

**1.4. Seal.**

The seal of the Association shall bear the name of the Association, the word "Georgia" and the words "nonprofit corporation".

**2. DEFINITIONS**

**2.1. Georgia Nonprofit Corporation Code**

The definitions contained in the Official Code of Georgia Annotated § 14-3-1, et. seq., (the "Code") shall be applicable to these By-Laws except where the context clearly requires otherwise.

**2.2. Lot**

The term "Lot" shall have the same meaning as such term is defined in the Declaration of Protective Covenants, Restrictions, Reservations and Easements for Valley Brook Homeowner's Association, Inc. (the "Restrictive Covenants") recorded at Deed Book \_\_\_\_\_, Page \_\_\_\_\_, Dekalb County, Georgia Records.

**2.3. Owner**

The term "Owner" shall have the same meaning as the term "Member" as such term is defined in the Restrictive Covenants.

**2.4. Property**

The term "Property" shall have the same meaning as such term is defined in the Restrictive Covenants.

**2.5. Common Area**

The term "Common Area" shall have the same meaning as such term is defined in the Restrictive Covenants.

**2.6. Declarant**

The term "Declarant" shall have the same meaning as such term is defined in the Restrictive Covenants.

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## **By-Laws For Valley Brook**

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### **4.3. Powers and Duties**

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and shall do all acts and things as are not by these By-Laws directed to be exercised and done by the Members. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) operating, caring for and maintaining the Common Area;
- (b) determining the common expenses required for the operation of the Common Area;
- (c) levying and collecting the assessments including, without limitation, any special assessments and late fees;
- (d) employing and dismissing personnel necessary for the maintenance, construction, reconstruction, repair, replacement and operation of the Common Area;
- (e) employing and dismissing personnel necessary for the maintenance and repair of the storm water detention facilities in the Common Area;
- (f) opening bank accounts in the name of the Association and designating the signatories required therefor;
- (g) keeping complete records of all of its meetings and acts, and the meetings and acts and business affairs of the Association and presenting a statement thereof to the Members of the Association at the annual meeting of the Members or at any special meeting of the Members when such statement is requested in writing by Members having not less than forty percent (40%) of the total authorized votes;
- (h) granting of licenses over the Common Area;
- (i) obtaining insurance on the Common Area;
- (j) making repairs, additions, improvements to or alterations to and reconstruction of the Common Area;
- (k) adopting and amending reasonable rules and regulations governing the conduct of all people on the Common Area, and otherwise governing the operation and use of the Common Area;
- (l) enforcing, on behalf of the Association, by any legal or equitable means, the Restrictive Covenants, these By-Laws, any resolutions of the Members or of the Board of Directors, and any rights and powers created in the Association by any other instrument, including, but not limited to, the Association's articles of incorporation; and
- (m) honoring any common obligations of the Lot Owners arising from the conveyance of the Lots to them, including obligations related to adjoining properties and related easements.

### **4.4. Organizational Meeting**

The first regular meeting of the Board of Directors is an organizational meeting. No notice shall be necessary to the Directors in order to legally constitute such an organization meeting provided a quorum of the Board of Directors shall be present at such organizational meeting. The organizational meeting of the Board of Directors shall also be deemed to be an organizational meeting of the Members.

### **4.5. Regular Meetings**

The Board of Directors shall meet regularly, at such intervals and such time and place as shall be determined by a majority the Directors; provided, however, that at least two (2) such meetings shall be held during each calendar year. No notice shall be required for such regular meetings of the Board of Directors. Regular meetings of the Board of Directors shall also be deemed to be regular meetings of the Members.

### **4.6. Special Meetings**

Special meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of special meetings of the Board of Directors shall be deemed given by the Secretary to each Director if delivered by hand to the residence on his Lot, or by mail, or telecopy to the address of his Lot, at least three (3) days prior to the date named for the meeting. Special meetings of the Board of Directors shall also be deemed to be special meetings of the Members.

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## **By-Laws For Valley Brook**

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### **4.7. Waiver of Notice**

Any Director may at any time waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place thereof. If all Directors are present at any meeting of the Board of Directors, such attendance shall constitute a waiver of notice and no further notice to the Directors of actions taken at such meeting shall be required.

### **4.8. Quorum**

At all meetings of the Board of Directors, the presence of at least a majority of the Directors in office immediately before the meeting begins shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting in which a quorum is present shall constitute the decision of the Board of Directors. If, at any meeting of the Board of Directors, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At the time any such adjourned meeting is recalled to order and a quorum is then present, any business which might have been transacted at the meeting originally called, but adjourned for lack of a quorum, may be transacted at such recalled meeting without further notice.

### **4.9. Action Taken Without a Meeting**

Any action which may be taken at a meeting of the Directors may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the Directors and is filed with the minutes of the proceedings of the Board of Directors. Such consent shall have the same force and effect as on action taken by unanimous vote.

### **4.10. Order of Business**

The order of business at all meetings of the Board of Directors shall be as follows:

- (a) roll call;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) reports of committees;
- (f) unfinished business;
- (g) new business; and
- (h) adjournment.

### **4.11. Parliamentary Procedure**

At all meetings of the Board of Directors, Robert's Rules of Order, as to such date amended, shall be followed, except in the case of conflict with these By-Laws, in which case these By-Laws shall prevail.

### **4.12. Proxies**

Votes may be cast in person or by proxy. Proxies must be filed with the Secretary at or before the time of each meeting. A Member may designate any person, who need not be a Member, to act as proxy. The designation of any such proxy shall be in writing, signed by the Member, and shall be revocable at any time by written notice to the Association by the Member designating the proxy.

### **4.13. Compensation**

No Director shall receive any compensation from the Association for acting as a Director. No remuneration shall be paid to a Director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors.

### **4.14. Liability of the Board of Directors**

The Directors shall not be liable to the Association or to the Members for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The Association shall indemnify and hold harmless, to the fullest extent permitted by law, each Director against all liability directly arising out of his conduct as a Director, provided such conduct is engaged in on behalf of the Association, and unless such conduct shall have been the result of willful misconduct or bad faith. Each Director shall have no personal liability with respect to any contract authorized by the Board of Directors and made by them on behalf of the Association.

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## **By-Laws For Valley Brook**

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### **5. OFFICERS**

#### **5.1. Designation**

The officers of the Association shall consist of a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President, Vice President, Secretary and Treasurer shall be elected from among the Directors and one (1) person may hold more than one (1) such office. The Board of Directors may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary, who need not be Directors or Members of the Association.

#### **5.2. Election of Officers**

The officers of the Association shall be elected annually by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

#### **5.3. Removal of Officers**

Upon the affirmative vote of a majority of the Board of Directors, any officer may be removed, either with or without cause, and the successor elected at any regular meeting of the Board of Directors at any special meeting of the Board of Directors called for such purpose, or by action taken without a meeting pursuant to Section 4.09 of these By-Laws.

#### **5.4. President**

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of President of a nonprofit corporation organized under the laws of the State of Georgia, including, but not limited to, the power to appoint committees from time to time as he may, in his discretion, decide are appropriate to assist in the conduct of the affairs of the Association. Specifically, he shall approve payment vouchers, shall sign all written instruments regarding the Common Area, and shall sign all checks in excess of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) and promissory notes, if any; provided that after the first meeting at which Members may vote, the President shall co-approve such payment vouchers and shall co-sign all checks in excess of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), and promissory notes as provided in Section 5.7.

#### **5.5. Vice President**

The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unwilling or unable to act. If neither the President nor the Vice President is present, willing or able to act, the Board of Directors shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be assigned to him by the Board of Directors or by the President.

#### **5.6. Secretary**

The Secretary shall keep the minutes of all meetings of the Board of Directors and shall maintain appropriate current records showing the Members of the Association together with their respective addresses. He shall have charge of all such books and papers as the Board of Directors and these By-Laws may direct, he shall give all notices and certificates required by these By-Laws, unless otherwise provided, and he shall, in general, perform all duties incident to the office of Secretary of a nonprofit corporation organized under the laws of the State of Georgia.

#### **5.7. Treasurer**

The Treasurer shall have responsibility for Association funds and securities, and shall keep the financial records and books of account in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. He shall, in general, perform all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Georgia. Specifically, he shall sign all checks in amounts less than ONE HUNDRED AND NO/100 DOLLARS (\$100.00), and after the first meeting at which Members may vote, he shall co-approve payment vouchers, and all checks in excess of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), and promissory notes, if any, as provided in Section 5.4.

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## **By-Laws For Valley Brook**

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### **5.8. Signatories to Documents**

All agreements, contracts, deeds, leases and other documents of the Association shall be executed by the President of the Association (or the Vice President when the President shall be absent, unwilling, or unable to act), and shall be separately attested by the Secretary or Assistant Secretary.

### **5.9. Compensation of Officers**

No officer shall receive any compensation from the Association for acting as such. No remuneration shall be paid to an officer for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors.

### **5.10. Liability of Officers**

The officers shall not be liable to the Association or to the Members for any mistake of judgment, negligence, or otherwise, except for their own, willful misconduct or bad faith. The Association shall indemnify and hold harmless, to the fullest extent permitted by law, each officer against all liability directly arising out of his conduct as an officer, provided such conduct is engaged in on behalf of the Association, and unless such conduct shall have been the result of willful misconduct or bad faith. No officer shall have personal liability with respect to any contract made by them on behalf of the Association.

## **6. OPERATION OF THE COMMON AREA**

### **6.1. Determination of Common Expenses and Fixing of Annual General Assessments**

The Board of Directors shall, from time to time, no less than annually, and at least thirty (30) days in advance of the assessment date, prepare a budget for the Association, to determine the amount of the assessments payable by the Members to meet the common expenses, and allocate and assess such common expenses equally upon the Members. The Board of Directors shall advise all Members promptly, in writing, of the amount of the assessment payable by each of them, respectively, as determined by the Board of Directors, as aforesaid, and shall furnish copies of each budget on which such common expenses are based to all Members and to their mortgagees upon written request. In the absence of any such action or notice by the Board of Directors, the annual assessment for the ensuing year shall be the same as that for the immediately preceding year. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members for the improvement, maintenance and reconstruction of the Common Area and facilities thereon and for any other authorized activity of the Association. The common expenses shall include, without limitation, the following items:

- (a) the cost of repair, maintenance and insurance for any structures in the Common Area;
- (b) the cost of repair, maintenance and comprehensive liability insurance for storm water detention facilities located in the Common Area or any Lot which are not maintained by any governmental body;
- (c) the cost of mowing, pruning, fertilizing, replacing and adding to the grass, flowers, shrubbery, trees and other items on the Common Area;
- (d) the cost of all insurance premiums on all policies of insurance required to be, or which have been obtained by the Board of Directors;
- (e) such amounts as the Board of Directors may deem proper for the operation of the Common Area, including, without limitation, an amount for its working capital, a reserve fund for replacements, and sums necessary to make up any deficit in the common expenses for any prior year;
- (f) the cost of fees and expenses incurred in the enforcement of the Restrictive Covenants;
- (g) any sums required by the Association pursuant to Section 8.04; and
- (h) the cost of honoring any common obligations of the Lot Owners arising from the conveyance of the Lots to them, including obligations related to the adjoining property and related easements.

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## **By-Laws For Valley Brook**

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### **6.2. Payment of Annual General Assessments**

All Members shall be obligated to pay the assessments assessed them by the Board of Directors. The Board of Directors may authorize assessments to be collected by a mortgagee of one or more Lots. The annual assessments provided for in this Article VI shall be established on a calendar year basis. The first annual assessment for each Lot shall be adjusted according to the number of days remaining in the calendar year. Each assessment shall be paid by the Member to the Association in one (1) or more installments on the date or dates fixed by the Board of Directors. Payment of assessments may be in the form of credit for duly authorized services performed by Members, evidenced by executed vouchers therefore; provided, however, that no such services shall be performed by a Member without the prior written approval of the Board of Directors. Each Owner of a Lot, by acceptance of a deed therefore, covenants and agrees to the foregoing and waives any rights to the contrary under applicable common law, equitable law or statutory law. The initial annual assessment shall be \$300.00 to be collected at closing of Lot purchase.

### **6.3. Special Assessments**

In addition to the annual assessments authorized above, upon approval of the Declarant, or its successors, successors-in-title, transfers or assigns, under the Restrictive Covenants and three-fifths (3/5) of the Members, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area, or such other purposes as shall be approved, as aforesaid. Any failure by the Board of Directors to act under this provision shall entitle the Owner of any Lot to apply to the courts for the same remedies, relief and damages to which the Board of Directors is entitled under Section 7.3 of the By-Laws, unless failure of the Board to act is pursuant to a unanimous vote of the Board of Directors.

### **6.4. Uniform Rate of Assessment**

Both annual and special assessments must be assessed at a uniform rate for all Lots.

### **6.5. No Waiver of Liability or Assessments**

No Member may exempt himself from liability for his share of assessments (whether general or special) by waiver of the use or maintenance of any of the Common Area, or by abandonment of his Lot.

### **6.6. Non-Liability After Conveyance**

No Member shall be liable for the payment of any part of the assessment which is assessed against his Lot subsequent to a sale, transfer or other conveyance by such Member; provided, however, the foregoing shall not be construed to affect a Member's personal liability as provided in Section 6.9 hereof.

### **6.7. Successor's Liability for Predecessor's Assessments**

An Owner who acquires a Lot shall be subject to a lien for any due and unpaid assessments against the Lot but such liability shall not exceed the amount set forth in any statement provided under Section 6.08 hereof.

### **6.8. Statement of Assessments**

Upon written request, the Association shall promptly provide any Member or prospective Owner a written statement of all paid or unpaid assessments or other charges or penalties due with respect to the Lot owned or to be acquired. A reasonable charge, as determined by the Board of Directors, may be made for the issuance of such statement. Such statement shall be conclusive evidence, as to all but the Member, of payment of any assessment therein stated to have been paid.

### **6.9. Default in Payment of Assessments**

If an assessment, special, annual or otherwise, is not paid on or before the due date, then such assessment shall become delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, shall thereupon become a continuing lien upon the Member's Lot, and the Lot Owner and his successors, successors-in-title, transfers and assigns shall have joint and several liability for the payment of said assessment. Any assessment installment which is not paid when due shall be delinquent. Each assessment installment not paid within ten (10) days after the due date shall be subject to a late charge established by the Board of Directors not exceeding TEN AND NO/100 DOLLARS (\$10.00), and such assessment installment shall also bear interest from the date of



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## By-Laws For Valley Brook

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delinquency at the maximum legal rate, but not exceeding fifteen percent (15%) per annum. Furthermore, should any assessment installment not be paid when due, the entire unpaid annual assessment, shall, at the option of the Board of Directors, become due, and may be collected forthwith, time being of the essence. The Association may bring an action at law or in equity against the Member personally obligated to pay assessment installments and/or foreclose its lien against such Member's Lot; in either event, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment as may then be due. Each Member, by his acceptance of a deed to a Lot, vests in the Association, or its agents, the right and power to bring an action against him personally for the collection of such charges as a debt or foreclose the aforesaid lien in the same manner as other liens for the improvement of real property, and each Owner hereby waives all equities of redemption, homestead, dower, and all other rights of exemptions of every kind. The lien provided for shall be in favor of the Association, and shall be for the benefit of all other Members. In addition, if an assessment is not paid on or before the date when due, the Association may (i) accelerate the entire unpaid balance of any annual assessment and declare it to be immediately due and payable, and/or (ii) suspend the membership rights of the delinquent Member, his right of enjoyment in and to the Common Area and facilities and suspend the delinquent Member's right to receive and enjoy such services and other benefits as may then be provided by the Association. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on such Member's Lot in favor of the Association.

### 6.10. Subordination of the Lien for Assessments to Mortgages

The lien of the assessments provided herein shall be subordinate to the lien of any institutional mortgage or mortgages now or hereafter placed upon the Lot or any portion thereof subject to assessment but only as it relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged Lot pursuant to a sale under power contained in such mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged Lot of his personal obligation to pay all assessments and charges coming due at a time when he is the Owner of such Lot; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of a subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or by transfer in any proceeding in lieu of foreclosure or by sale under power); and no sale or transfer of such lot to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to a sale under power, shall relieve any existing or previously existing Owner of such Lot from any personal obligations or relieve such Lot or such Owner of such Lot from liability from any assessments or charges authorized hereunder coming due after such sale or transfer. Notwithstanding the foregoing, the Association's Board of Directors may at any time, either before or after any mortgage or mortgages are placed on such Lot waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectable by the Association hereunder with respect to such Lot coming due during the period in which such Lot is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer. Mortgagees will not be liable for unpaid assessments.

### 6.11. Maintenance of Property

Each Lot Owner shall keep any Lot or Lots owned by him, and all improvements therein or thereon, in good order and repair, and free of debris, including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to maintain the premises, and the improvements situated thereon, the Association, after notice to the Owner and approval by vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Lot to correct drainage and to repair, maintain and restore the Lot, and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall be added to and become a special assessment upon such Lot, to have the same effect and furnish to the Association the same rights as any assessment made under this Article.

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## **By-Laws For Valley Brook**

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### **7. ARCHITECTURAL CONTROL**

#### **7.1. Restrictions on the Use of the Property**

In order to provide for congenial use of the Property, and for the protection of the values of the Lots, each Member agrees to abide by the Restrictive Covenants, and the use of the Property and Lots shall be restricted to and shall be in accordance with the said Restrictive Covenants.

#### **7.2. Rules and Regulations**

Occupants shall be subject to rules and regulations concerning the use of the Common Area which may be compiled from time to time for the Association through its Board of Directors, and recorded in the record book of the Association.

#### **7.3. Abatement and Enjoyment of Violations by Occupants**

The violation of any rule or regulation, or the breach of any of the Restrictive Covenants or the breach of any obligation contained by these By-Laws, or in any resolution of the Board of Directors by any Member or occupant, shall give the Board of Directors the right, in addition to any other rights set forth in these By-Laws, to enjoin, abate or remedy the continuance of any such breach by appropriate equitable proceedings, including mandatory injunction, and to collect from the Lot Owner damages and Costs and expenses, including reasonable attorneys' fees, of enforcement of the By-Laws and resolutions of the Board of Directors, which are attributable to such violations by any occupant or Owner of a Lot.

### **8. DAMAGE OR DESTRUCTION OF COMMON AREA**

#### **8.1. Determination to Reconstruct or Repair**

If any part of the Common Area shall be damaged or destroyed, reconstruction or repair shall be compulsory unless the Board of Directors votes unanimously not to reconstruct or repair.

#### **8.2. Estimate of Cost**

Promptly after the occurrence of loss or damage to any part of the Common Area, the Board of Directors shall obtain a reliable and detailed estimate of the cost to reconstruct or repair. The Board of Directors shall adjust any loss.

#### **8.3. Plans and Specifications**

Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original common facility except for modifications thereto approved by the Board of Directors.

#### **8.4. Assessments**

If the proceeds of insurance, if any, are insufficient to defray the estimated cost of reconstruction and repair by the Board of Directors, or if, at any time during the reconstruction and repair, or upon the completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, such deficiency shall be charged against all Members as a common expense, subject to a right of reimbursement against individually responsible Owners.

#### **8.5. Construction Funds**

The funds for payment of cost of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Board of Directors from assessments against Owners, shall be disbursed in Payment of costs of reconstruction or repair as provided in this Section 8.

### **9. INSURANCE**

#### **9.1. Coverage**

To the extent available, the Association may obtain and maintain insurance coverage on the Common Area. The Board of Directors may, or may not, in its discretion, obtain such insurance, and the amounts of such insurance, if any, shall be determined solely in its discretion.

#### **9.2. Casualty and Liability Insurance**

To the extent available, the Board of Directors may obtain and maintain comprehensive general liability insurance in such limits as the Board of Directors may, from time to time, determine, insuring the Association, the Board of Directors, and each Member, for claims arising out of, or in connection with, the ownership, operation or maintenance of any of the Common Area, including errors and omissions

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## **By-Laws For Valley Brook**

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coverage as to the Board of Directors, Protective liability coverage on the operation of independent contractors, blanket contractual liability, personal injury liability, and owned, non-owned or hired automotive equipment, excluding, however, Member liability coverage for claims arising in connection with the Property. Such comprehensive general liability insurance shall also cover cross-liability claims of one insured against the other. The Board of Directors shall review such limits annually.

### **9.3. Workers' Compensation Insurance**

The Board of Directors shall, if necessary, obtain and maintain Workers' Compensation insurance, including employer's liability coverage, if necessary, to meet the requirements of the laws of the State of Georgia.

### **9.4. Other Insurance**

The Board of Directors is authorized to obtain and maintain such other insurance as it shall determine from time to time to be desirable.

### **9.5. Premiums**

It shall be the duty and obligation of the Board of Directors to obtain all insurance required in this Article IX at the best available premium rate. Premiums upon insurance policies purchased by the Board of Directors shall be paid as a common expense.

### **9.6. Deductibles**

If maintenance, repair, or replacement is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid the person or persons (including the Association) who would be responsible for such maintenance, repair or replacement in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Area, the deductible shall be apportioned equitably by the Association among the parties suffering loss in the same proportion as each party's loss bears to the total.

## **10. RECORDS**

### **10.1. Records and Audits**

The Association shall maintain detailed records of the actions of the Board of Directors, minutes of the meetings of the Board of Directors, minutes of the meetings of the Members, names and addresses of the Members, and financial records and books of account for the Common Area, including chronological listings, receipts and expenditures, as well as a separate account of each Lot or living unit, which, among other things, shall contain the amount of each assessment of common expenses against such Lot or living unit, the date due, the amount paid thereon, and the balance remaining unpaid. Unless a Member notifies the Association of change in ownership, the Association may rely on the names of the Lot Owners appearing on the tax assessor's list as the last assessment date.

### **10.2. Examination of Records**

Each Member shall be permitted to examine the books of account of the Association at reasonable times on business days, but not more than once in any calendar month.

## **11. MISCELLANEOUS**

### **11.1. Notices**

All notices hereunder to the Association shall be delivered by hand or sent by mail to the Association at its registered office address, to the attention of Members at the address of their respective Lots, or to such other address as may have been designated by the Members from time to time in writing to the Association. All notices from or to the Association shall be deemed given when mailed, postage prepaid, except notices of changes of address, which shall be deemed to have been given only when actually received by the Association.

### **11.2. Captions**

The captions herein are inserted as a matter of convenience and for reference only, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

## **By-Laws For Valley Brook**

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### **11.3. Gender**

The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

## **12. INVALIDITY, CONFLICT AND WAIVER**

### **12.1. Invalidity**

Invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws.

### **12.2. Conflict**

These By-Laws are set forth to comply with the requirements of the Code. In the event of any conflict between these By-Laws and the provisions of the Code, the Code shall control. In the event these By-Laws conflict with the Restrictive Covenants, these By-Laws shall control.

### **12.3. Waiver**

No restriction, condition, obligation or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

## **13. AMENDMENTS TO BY-LAWS**

### **13.1. Method of Amendment**

So long as Declarant owns a Lot, these By-Laws may be amended by Declarant in its sole discretion, provided said amendment does not materially and adversely affect the interest of any mortgagee or Lot Owner. Thereafter, these By-Laws may be altered, amended, or added to by a three-fifths (3/5) vote of the Members. Notwithstanding the foregoing relating to amendments by Members to the contrary, the power of the Members to amend these By-Laws shall be limited so that in no event may any provision stipulating action or inaction only upon a unanimous vote be amended without the consent of all of the Members.

### **13.2. Effect of Amendments Upon Encumbrances**

No amendment or modification of these By-Laws will affect or impair the validity or priority of any mortgage encumbering the Lots nor the validity of priority of any other prior lien.

I hereby certify that the foregoing By-Laws were duly adopted by the Board of Directors of the Corporation to be effective as of \_\_\_\_\_ 1997.

\_\_\_\_\_[SEAL]  
Thomas F. Rybert, President

DECLARATION  
OF  
PROTECTIVE COVENANTS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS

For Valley Brook

THIS DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, RESERVATIONS AND EASEMENTS (hereinafter referred to as the "Declaration") is made and published by Rybert Properties, Inc., a Georgia corporation (hereinafter referred to as the "Declarant")

WITNESSETH:

**WHEREAS**, Declarant is the owner of certain real property lying and being in Land Lot 200 of the 18 TH. District, Dekalb County, Georgia, and known as Valley Brook (hereinafter referred to Valley Brook as and being more fully and particularly described on Exhibit "A", attached hereto and incorporated herein by reference (hereinafter sometimes referred to as the "Property") ; and

**WHEREAS**, Declarant desires to create on the Property a planned community with residential housing on individual lots (hereinafter referred to individually as "Lot" or collectively as "Lots"),

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of property values, aesthetic qualities, amenities and opportunities in said community, and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the within covenants, restrictions, reservations, easements, charges and liens, each and all of which are for the benefit of said Property and each owner thereof;

**WHEREAS**, Declarant has formed a nonprofit membership corporation known as Valley Brook Homeowners Association, Inc. (hereinafter referred to as the "Association") to (i) manage, repair and maintain the "Common Areas" (as that term is defined in Section 1.4 [below], (ii) enforce the covenants, restrictions, reservations, easements, charges and liens declared herein, and (iii) collect and disburse the assessments and charges hereinafter created, for the purpose of promoting the recreation, health, safety and welfare of the Lot owners; and

**WHEREAS**, Declarant desires to declare and publish protective covenants, restrictions, reservations and easements regulating and limiting the use of the Property for the mutual benefit and advantage of Declarant and its successors, successors-in-title, transfers and assigns to the Lots, and to impose upon all such persons a duty and obligation to abide by the By-Laws of the Association (hereinafter referred to as the "By-Laws"), a copy of which is attached hereto as Exhibit "B", and incorporated herein by reference.

**NOW, THEREFORE**, in consideration of the premises, Declarant has and by these presents does hereby make, declare and publish the By-Laws and the following protective covenants, restrictions, reservations, easements, charges and liens all of which shall be covenants running with the Property, and the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations, easements, charges and liens hereinafter set forth.

1.                    **DEFINITIONS**

1.1.                    **Association:**

"Association" shall mean and refer to Valley Brook Homeowners Association, Inc. which is a Georgia non-profit membership corporation, and its successors, successors-in-title, transfers and assigns.

1.2.                    **Association Documents:**

"Association Documents" shall refer to the Articles of Incorporation and By-Laws of the Association, as amended from time to time.

1.3.                    **Architectural Review Board:**

"Architectural Review Board" shall mean the Declarant or its successors, successors-in-title, transfers and assigns. Once Declarant has ceased to own any Lots, the Architectural Review Board shall be selected by the Association.

1.4.                    **Common Area**

"Common Area" shall mean:

(i) those portions of the Property which are designated as "Common Area", "25' Landscape/Wall Easement", Detention Area, "20' Sanitary Sewer Easement", "10' Utility Easement", "10' Tree Buffer", "Private Drive Easement", "20' Drainage Easement" on the subdivision plat of Valley Brook recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Dekalb County, Georgia records,

(ii) those areas to which the Association is to have access and other rights pursuant to the Association Documents and this Declaration, and

(iii) those areas otherwise conveyed by Declarant to the Association.

1.4.                    **Declarant:**

"Declarant" shall mean and refer to Rybert Properties, Inc. any of the following to which a recorded conveyance of Declarant's rights hereunder has been made: (a) a purchaser from Declarant of a substantial interest in any remaining portion of the Property owned by Declarant, (b) a corporation, partnership, association or other entity organized, established or purchased by, or which purchases, Declarant, pursuant to, but not limited to, any corporate acquisition, merger, or business reorganization, or (c) the then members of the Architectural Review Board.

1.5.                    **Declaration:**

"Declaration" shall mean the protective covenants, restrictions, reservations, easements, charges, liens, By-Laws and all other provisions set forth in this document, together with any supplemental declarations and amendments to this Declaration made in accordance with the provisions hereof.

1.6.                    **Lot**

"Lot" shall mean and refer to the lots shown upon any recorded subdivision map of the Property with the exception of any areas qualifying as a "Common Area" under the definition contained in the By-Laws.

1.7.                    **Member:**

"Member" shall mean and refer to the record title owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest under a mortgage or other security instrument by means of which title to the Lot is conveyed or encumbered to secure a debt. "Member" means Lot owner.

1.8.                    **Mortgage:**

"Mortgage" shall mean and refer to any contractual security instrument by means of which fee simple title to a Lot is conveyed or encumbered to secure a debt, including, but not limited to, mortgages, security deeds, loan deeds and deeds to secure debt.

1.9.                    **Mortgagee:**

"Mortgagee" shall mean and refer to the holder of record of a Mortgage, whether it be one or more person or entities.

1.10. Person:

"Person" shall mean and refer to an individual, corporation, partnership, association, trust, estate or any other legal entity.

1.11. Property:

"Property" shall mean and refer to that certain real property described on Exhibit "A", attached hereto and incorporated herein by reference. The name Valley Brook shall refer to the Property.

2. MEMBERS AND PROPERTY RIGHTS

2.1. Membership:

Any Person who has or acquires title to a Lot shall be a Member of the Association. There shall be one membership for each Lot, and such membership shall be automatically transferred upon the conveyance of any such Lot.

2.2. Member's Easement Of Enjoyment:

Every Member shall have a right and easement of enjoyment and maintenance in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot. Such right and easement of enjoyment and maintenance shall include the right to the non-exclusive use by members of the Association of such Common Area.

2.3. Extent Of Members' Easements:

The rights and easements of enjoyment and maintenance created hereby shall be subject to the right of the Declarant and Association to dedicate or transfer any part of the ownership, maintenance or use of the Common Area to any Person, entity, public agency, authority or utility for the use of such Person, entity, agency, authority or utility; provided, that any such dedication or transfer by the Association shall require approval by a majority of the "Board of Directors" (as that term is defined in the By-Laws). Provided, further, that the rights and easements granted to Members by this Declaration shall be subject to any restrictions set forth herein or in the Association Documents.

2.4. Delegation Of Use:

Any Member may delegate his right of use to the Common Area to the occupants of his Lot, subject to the other provisions of this Declaration and the Association Documents. The rights and privileges of such occupants are subject to suspension to the same extent as those of the Member.

3. ARCHITECTURAL CONTROL:

3.1. Review of the Architectural Plans and Specifications by Declarant:

- 3.1.1. Declarant is hereby granted the authority to approve or disapprove the building plans and specifications for any new building or structure to be erected upon any Lot.
- 3.1.2. The Architectural Review Board is hereby granted the authority to approve or disapprove the plans and specifications for construction of any exterior addition to, change in, or alteration of any building or structure already located on a Lot or the reconstruction of any building or structure.
- 3.1.3. Before any residence, garage, playhouse, out-building, greenhouse, fence, wall, or other structure, or exterior addition to, change in, or alteration of any such structure or reconstruction of such structure shall be commenced, erected, altered or maintained upon any Lot, complete, final building plans and specifications, including, but not limited to, specifications of materials, shall have been submitted to Declarant or the Architectural Review Board, as appropriate, with one copy to be retained by Declarant or the Architectural Review Board, as appropriate, for its records, and such plans and specifications shall include the following information, where applicable:
  - ( 1 ) building plans showing floor plans and front, side and rear elevations;
  - ( 2 ) exterior finish schedule showing material, style, and color for all surfaces;
  - ( 3 ) site plan showing location of building, drives, parking area, sidewalks, and all other improvements;

- ( 4 ) clearing, grading and drainage plan showing limits of clearing, changes in grade and provisions of water retention facilities, including silt control both during and after construction;
  - ( 5 ) landscape plan which must include automatic lawn sprinkling system (which maybe submitted after construction commences, but must be approved by Declarant or Architectural Review Board, as appropriate, and implemented before occupancy); and
  - ( 6 ) Name of builder.
- 3.1.4. The purpose of this Article 3, in providing Declarant or the Architectural Review Board, as appropriate, with the authority to approve or disapprove plans and specifications for all structures constructed on the Lots is to maintain the value of all Lots and to protect all Lot owners against a diminution of value resulting from the construction of a residence or other structure incompatible with the proper development of Valley Brook Declarant's or the Architectural Review Board's right to approve or disapprove any such plans and specifications shall be in the sole discretion of Declarant or the Architectural Review Board, as appropriate, and shall be based upon the following factors:
- ( 1 ) harmony of exterior style, materials, and colors with the existing or proposed structures erected on the Lots of Valley Brook;
  - ( 2 ) general quality in comparison with the existing standards of structures erected on the Lots of Valley Brook;
  - ( 3 ) location in relation to surrounding structures;
  - ( 4 ) location in relation to topography, streams, trees, natural vegetation; and
  - ( 5 ) aesthetic considerations.
- 3.1.5. Declarant or the Architectural Review Board, as appropriate, shall act with all reasonable promptness upon receipt of plans and specifications submitted in accordance with this Article 3 to approve or disapprove such plans and specifications. If Declarant or the Architectural Review Board, as appropriate, shall fail to approve or disapprove such plans and specifications within thirty (30) days after written demand for the approval of such plans and specifications has been received, then such plans and specifications shall be deemed approved, provided, however, that all other conditions and restrictions of this Article 3 shall not be deemed waived but shall remain in full force and effect. No work may commence until plans and specifications submitted for approval are approved by Declarant or the Architectural Review Board, as appropriate.
- 3.1.6. Declarant or the Architectural Review Board, as appropriate, do not review Architectural Plans and Specifications for compliance with any local, state or federal law, including, but not limited to, building codes and zoning ordinances, or for structural integrity. Such review is the sole responsibility of the Lot owner.

### 3.2. Construction of Residences and Other Structures:

- 3.2.1. There shall be a minimum area of two-thousand (2,000) square feet of total living space ("total living space" as defined herein is an area exclusive of garages, porches, terraces, bulk storage area, attics and unfinished basements) of the residence located on each Lot.
- 3.2.2. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot at any time with the exception of:
- ( 1 ) temporary buildings, trailers or mobile units used for construction purposes during the construction period of a residence on such Lot; or
  - ( 2 ) a temporary real estate sales office maintained by Declarant or Declarant's designated agent for the sale of Lots or homes.
- 3.2.3. Detached buildings of a permanent nature may be placed on a Lot to be used for the following purposes:
- ( 1 ) a building for servants quarters, guest quarters, or children quarters;
  - ( 2 ) a playhouse or other enclosed building for recreational purposes;
  - ( 3 ) a greenhouse; or
  - ( 4 ) a doghouse, pursuant to subsection (f) of this Section 3.2; or



( 5 ) a detached garage.

Such detached buildings shall not exceed two (2) stories in height and shall conform in exterior design and quality to the residence. With the exception of detached buildings used for garages, detached buildings placed on any Lot shall be located only behind the residence as such residence fronts on a street of Valley Brook. Declarant or the Architectural Review Board, as appropriate, shall have the right to approve or disapprove the location plans and specifications for any detached building to be erected on any Lot, and such building may not be erected until complete final plans and specifications for detached buildings have been submitted to and approved by Declarant or the Architectural Review Board, as appropriate, in accordance with the provisions of Section 3.1 hereof.

- 3.2.4. The exterior of all residence and detached buildings shall be completed within nine (9) months after the construction of same shall have been commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, floods, lightning, earthquakes or other casualties. Notwithstanding the foregoing provision, the exterior of all residences and detached buildings shall be completed within one (1) year after the construction of such residence or detached building shall have been commenced.
- 3.2.5. No Lot shall be used or maintained as a dumping ground or burial site for rubbish, construction debris, stumps, trees and similar matter, and containers for garbage or other refuse placed on any Lot shall be located only so as not to be visible from streets except for those times designated by governmental authorities when such containers are to be placed on said streets for collection. Such containers shall be underground or in screened sanitary enclosures, shall be closed at all times, and shall be maintained under sanitary conditions. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot, and the location of any garbage area must be approved in writing by Declarant or the Architectural Review Board, as appropriate.
- 3.2.6. No stable, poultry house or yard, rabbit hut or other similar yard structure, with the exception of a doghouse (other than a doghouse constructed, used or maintained for breeding purposes), shall be constructed or allowed to remain on any Lot unless otherwise approved in writing by the Declarant or Architectural Review Board, as appropriate. Any structure to be used for the purpose of a doghouse shall be erected and located on a Lot in accordance with the provisions of subsection (c) of this Section and the provisions of this Declaration.
- 3.2.7. Construction of model homes is expressly permitted, provided, such structures conform to the restrictions and requirements of this Declaration.
- 3.2.8. Garage openings shall not be constructed so as to face the street without the permission of the Declarant or the Architectural Review Board, as appropriate, however, if approval is granted, the installation of doors on all garage openings facing any street is required. Said garage doors shall be equipped with automatic door openers, and shall be kept closed except when the doorway is in use.
- 3.2.9. No radio transmission, receiving aerials, or television antennas may be installed on the exterior of any Lot, residence or detached building.
- 3.2.10. Any fencing shall also be submitted to the Declarant or the Architectural Review Board, as appropriate, for approval. Declarant reserves the right to require that fencing or planting of greenery or both be placed around swimming pools or tennis courts.
- 3.2.11. No alteration in the exterior appearance of any residence or detached building including, but not limited to, the paint color of any such residence, detached building or structure, or modification of the landscaping shall be made without approval of the Architectural Review Board.
- 3.2.12. Should any residence or other structure on any portion of any Lot be destroyed in whole or in part, it must be reconstructed in accordance with the original plans and specifications approved by the Declarant or the Architectural Review Board, as appropriate, and any subsequently approved modifications thereto. The debris therefrom must be removed and the Lot restored to a neat and sightly condition as soon as practical but in no event later than the date which is two (2) months after the date of such destruction.

- 3.2.13. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan of development and operation for the Property. Enforcement of these covenants and restrictions shall be by Declarant until Declarant ceases to own any Lots and, thereafter, by the Association or any Member, Lot owner or Mortgagee, by any proceeding at law or in equity, against any Person or Persons violating or attempting to violate any covenant, restriction, reservation, easement, charge or lien, either to restrain or enjoin violation or to recover damages, or both, or against any Lot to enforce any lien created hereby; and the failure or forbearance by Declarant or the Association, Lot owner or Mortgagee to enforce any covenant, restriction, reservation, easement, charge or lien herein contained shall in no event be deemed to constitute a waiver of the right to do so thereafter.

### 3.3. Location of Buildings and Structures; Lot Size:

- 3.3.1. Building locations will be determined solely by the Declarant or the Architectural Review Board, as appropriate, with the following considerations:
- (A) Dekalb County requirements.
  - (B) location of building sites on adjoining lots.
  - (C) utility easements as hereinafter described.
  - (D) aesthetics.
  - (E) topography.
  - (F) trees and natural vegetation.
  - (G) owner preferences.
- 3.3.2. Notwithstanding the provisions of subsection (a) of this Section 3.3, but subject to the provisions of Section 3.2.10, privacy fences and/or walls may be constructed along the side and rear Lot lines of a Lot provided that:
- (1) such fences and/or walls shall not be in violation of the provisions of 3.3 or Section 3.1 hereof; and
  - (2) the plans and specifications for the erection of such fences and/or walls have been submitted to and approved by Dekalb County and the Declarant or the Architectural Review Board, as appropriate, pursuant to the provisions of Sections 3.01 and 3.02 hereof.
- 3.3.3. No house, garage, playhouse, outbuilding, greenhouse, fence, wall or any other above-ground structure, nor any shrubbery, hedges, flowers or other vegetation which obstructs horizontal sight lines at elevations between two (2) and six (6) feet above the street shall be erected, placed, planted, or permitted to remain on any portion of any corner Lot within any triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines. In the case of any rounded corner, the twenty-five (25) feet shall be measured from the point formed by the intersection of the street, if extended to form an angle instead of a curve. The same sight line limitations shall apply to that area of every Lot within the ten-foot radius emanating from the intersection of any boundary line of any Lot with the edge of a driveway pavement. Trees may be planted and maintained within any of such areas if the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

### 3.4. Additional Requirements with Respect to Structures Maintained on Lots:

- 3.4.1. No outside clothesline shall be permitted on any Lot.
- 3.4.2. No sign of any kind shall be erected or maintained on any Lot with the exception of a professionally lettered sign of a builder, Realtor, owner or Declarant advertising such Lot or the residence of such Lot for sale; provided, however, that any such sign shall be in compliance with the following requirements:
- (1) no sign shall be more than twenty-four (24) inches by thirty (30) inches in size;
  - (2) no more than two (2) signs shall be placed on any Lot at the same time;

- (3) any and all signs shall be mounted and/or affixed in a single location separate from the residence and separate from any other structure, such as a garage, fence retaining wall or shed located on the Lot; and
- (4) no sign shall be attached to any tree or shrubbery.

Notwithstanding the provisions of this Section 3.04, Declarant's right to use such signs as shall be reasonably necessary to promote the sale of Lots or homes in Valley Brook shall be permitted.

- 3.4.3. Only one (1) mailbox shall be located on any Lot. The mailbox shall be selected to be consistent with the quality and design of surrounding dwellings and mailboxes and shall be placed and maintained to complement the neighborhood as well as the residence to which it belongs. Said design must be approved by Declarant or Architectural Review Board.
- 3.4.4. No lumber, bricks, stones, concrete blocks, scaffolding, mechanical devices, or any other materials or devices or construction debris used for building purposes shall be placed, stored or kept on any Lot, except during and when being used in construction.
- 3.4.5. No exposed above-ground tanks for the storage of fuel, water or any other substance shall be located on any Lot.
- 3.4.6. Adequate off-street parking shall be provided by the owner of each Lot for parking, and no Lot owner shall park all or any vehicle(s) on the streets of Valley Brook as a matter of course. Enclosed parking shall be provided for a minimum of two (2) cars on each Lot. Other vehicles, including, without limitation trucks, motorcycles, campers, vans, trailers, motor homes, boats, and recreational vehicles may be parked on an owner's Lot only if parked in screened areas as approved by Declarant or the Architectural Review Board, as appropriate, which screening shall conceal the vehicles from view from streets and from any other Lot(s).
- 3.4.7. Declarant reserves the right to retain specific sight easements (and/or areas on individual Lots where trees and natural vegetation shall not be removed) in the individual Lot deeds.
- 3.4.8. Parking of any vehicle whatsoever shall be discouraged on the public and private roadways in the Property.
- 3.4.9. Sports equipment, such as basketball goals and play-ground facilities must be located to the rear of the residence, and not visible from the street, unless submitted and approved pursuant to Section 3.01 hereof.

### 3.5. Use of Lots:

- 3.5.1. Lot owners, residents, guests and invitees shall refrain from any act or use of their Lot which could reasonably cause embarrassment, discomfort or annoyance to other Members, or interfere with the quiet enjoyment of the Lots by each of the other Lot owners.
- 3.5.2. No livestock, animals or poultry of any kind may be kept on any Lot, and no more than two (2) domestic pets, including cats, dogs, and similar animals may be kept on any Lot without the consent of the Declarant or the Architectural Review Board, as appropriate.
- 3.5.3. The pursuit of hobbies or other activities including specifically, without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles, and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any Lot unless in screened areas as approved by the Declarant or the Architectural Review Board, as appropriate, which screening shall conceal the hobbies or other activities from view from streets and from other Lot(s).
- 3.5.4. No residence or detached building on any Lot shall be used other than as a one-family dwelling, and no portion of a residence or a detached building on any Lot may be used for a church, school, community center, kindergarten or other similar use. No trailer, camper, structure of temporary character, tent or garage on any Lot shall be used at any time as a residence either temporarily or permanently.

- 3.5.5. No two (2), three (3) or four (4) wheel motorized recreational vehicles (including certain recreational vehicles designed and used for camping including, but not limited to, Winnebago and boats) shall be operated or permitted on all or any portion of the Property.
- 3.5.6. There shall be no planting or maintenance of crops or vegetables except for domestic purposes and all such crops and vegetables shall not be visible from any street or Lot.
- 3.5.7. No trade or business of any kind may be conducted in or from a residence or any part of the Property, including business uses ancillary to a primary residential use, except that the Member or occupant residing in a residence, may conduct such business activities within the residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence; (ii) the business activity does not involve persons coming onto the Property who do not reside on the Property; (iii) the business activity conforms to all zoning requirements for the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Association. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. The leasing of a residence located on a Lot shall not be considered a business activity violates of this provision.
- 3.5.8. No Lot shall be occupied by more than a single family. As used herein, the term "single family" shall mean one or more persons, provided all persons occupying the Lot are interrelated by blood, adoption, or marriage. If persons occupying a Lot are not all interrelated by blood, adoption, or marriage, then the occupancy of that Lot shall be limited to a maximum number of persons equal to the number of bedrooms in the residence on that Lot, but not to exceed three (3) persons; provided, however, that persons occupying a Lot who are interrelated by blood, adoption, or marriage may occupy that Lot with one (1) person not related by blood, adoption, or marriage. The words "by blood" shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, first cousins, and no other degree of kinship. "Occupancy" for purposes of this Declaration, shall be defined as staying overnight in a residence for a total of more than thirty (30) days, either consecutive or non-consecutive, in any year. "Marriage" shall include common law marriage as Provided for under the laws of the State of Georgia.

### 3.6. Maintenance of Lots:

- 3.6.1. Before any residence may be occupied in Valley Brook such residence must be completely finished on the exterior, and the driveway, sidewalk and parking areas of such residence must be surfaced in accordance with the plans approved by Declarant or the Architectural Review Board, as appropriate. In addition, the yard area of such Lot visible from any street must be cleaned and all building materials and devices used for the construction of such residence must be removed from such Lot pursuant to the provisions of Section 3.04(d) and 3.06(g) hereof, and the approved landscaping plan must be implemented.
- 3.6.2. No owner of any Lot shall maintain the grounds of such Lot, whether vacant or occupied, in other than a neat and attractive condition. No unclean, unsightly, or unkempt conditions of buildings or grounds on any Lot shall be permitted where such conditions tend to decrease the aesthetic standards of the neighborhood.
- 3.6.3. Upon the failure of any owner to maintain his Lot, whether vacant or occupied, in a neat and attractive condition, the Architectural Review Board may, after ten (10) days written notice to such Lot owner, enter upon such Lot and have the grass, weeds and other vegetation cut and the trees, shrubs, plants and other debris removed therefrom when, and as often as, the same is necessary in the judgment of the Architectural Review Board in order to maintain the aesthetic

standards of the neighborhood. In the event that it is necessary to enter upon such Lot pursuant to this Section 3.6.3:

- (1) the owner of such Lot shall be personally liable to the Association for the cost of any cutting, clearing and maintenance described above;
- (2) liability for the amount expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such Lot, enforceable on the same terms as the lien of assessments created by Article V hereof.
- (3) all costs incurred by the Architectural Review Board shall be reasonable;
- (4) entry by the Architectural Review Board for the purpose of performing work required under this subsection shall only be between the hours of 7:00 a.m. and 6:00 p.m. (E.S.T.); and
- (5) the owner of such Lot shall be personally liable to the Association for any injury sustained in the cutting, cleaning and maintenance described above.

3.6.4. Unless located within ten (10) feet of a residence or detached building or within ten (10) feet of an approved site for such residence or buildings, no trees, shrubs, bushes or other vegetation having a trunk diameter of six inches or more at a point of two (2) feet above ground level located on any Lot shall be cut, destroyed or mutilated. This requirement may be waived only upon the express prior written permission of Declarant or the Architectural Review Board, as appropriate. Dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the owner thereof.

3.6.5. Declarant may specify prior to construction, for any Lot, the location and manner of excavation, dirt and fill storage, digging, backfilling, etc., for utility trenches and house construction, the color and composition of roofing materials, the color and composition of bricks or siding, and the style or architecture. Such standards may include, but not necessarily be limited to, the following: off-site storage of fill, dirt or construction debris; stockpiling of fill from utility trenches; backfilling utility trenches; concrete walls covering exposed concrete blocks used in the construction of any residence or other structure, with either brick or natural stone or other approved material by Declarant or the Architectural Review Board, as appropriate; and the general appearance of the residence's walls, fences, or other structures. Such standards and requirements may vary from Lot to Lot and may be imposed by Declarant in its sole discretion so as to minimize disruption of trees, tree roots, existing ground cover, rock outcropping, or other natural features, and to ensure the aesthetic harmony of exterior design with existing structures located on the Property. Indiscriminate grading or trenching is strictly forbidden, as these may harm natural features which protect and enhance the beauty and privacy of the entire Property and to encourage the aesthetic standards of the neighborhood.

3.6.6. Declarant may specify specimen trees on particular Lots which must be protected during and subsequent to construction with steps such as, but not limited to, deep-root fertilization, pruning, repair of tree wounds, protection by fencing, or planking, spraying to control disease and insect infestation, or other protective programs.

3.6.7. During construction, no fill, dirt, sand, block, pipe or construction debris may be stored on or allowed to remain on any Lot for over sixty (60) days. The Declarant or the Architectural Review Board, as appropriate, may fine Lot owners for infractions of this Section 3.06, with such fine not to exceed fifty dollars (\$50) per infraction per day. Any such fines shall be promptly paid to the Association, and shall be used by the Association to replant suitable trees to replace those adversely affected by improper or inadequate protection during construction.

### 3.7. Governmental Regulations:

All governmental building codes, health regulations, zoning restrictions and other governmental regulations applicable to the Property shall be observed. In the event of any inconsistency between the provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply. Each Lot owner shall be jointly and severally obligated to perform those duties and obligations of the owner (sometimes referred to as "applicant," "developer", "homeowners association" or similar language) contained in the zoning rules, regulations and conditions and the recorded subdivision plat applicable to the Property.

3.8. Architectural Standards:

The architectural review standards set forth in this Declaration may vary over time and any such actions shall not constitute a waiver or stop future enforcement.

4. EASEMENT RESERVATIONS

(a) Declarant hereby reserves non-exclusive easements over, under and across each Lot for the evaluation of all architectural changes and the installation, repair, replacement, maintenance, and use of sewers, storm drains and utility facilities and distribution lines, including, without limitation, water, gas, electric and telephone distribution lines, storm and sanitary sewers, cable television lines, walls, security systems, and ingress and egress over all roads and highways. Declarant shall have the right at all reasonable times to enter upon such portion of each Lot in order to install, repair, replace, or maintain any such sewers, facilities, or distribution lines; provided, however, that (i) such rights shall be exercised in a reasonable manner so as to minimize interference with any such Lot; and (ii) during each such instance of such installation, repair, replacement, or maintenance, all soil, paving, and landscaping which is removed or disturbed shall be replaced and each Lot shall, as nearly as practicable, be restored to its condition prior to such installation, repair, replacement or maintenance. Declarant shall have the right to assign the benefits of the foregoing easements to any electric company, gas company, telephone company, or other public utility, or to the State of Georgia, or any subdivision or agency thereof, for the purpose of so installing, repairing, replacing, maintaining, and operating such sewers, facilities or distribution lines. Declarant's rights under this Article shall continue after Declarant has ceased to own any Lots.

(b) Declarant and the Association shall have the right to place, replace and maintain fencing, walls and landscaping in those areas identified as the "Detention Areas, "25' Landscape/Wall Easement", 10' Tree Buffer, Private Drive Easement", "Common Areas" on the Plat referred to in Section 1.04. Declarant and the Association shall also have the right of access to such areas through each Lot adjacent to such areas. There shall be no right of pedestrian access to those easement areas except as otherwise provided herein.

5. GENERAL PROVISIONS:

5.1. Enforcement:

The Declarant, or after Declarant ceases to own any Lots, the Association, or any Member or any Mortgagee, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by any Member or Mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed or construed to be a waiver or relinquishment of the right to do so thereafter. Likewise, any acceptance by the Declarant, the Association, or by any Member or Mortgagee of the performance of an obligation, with the knowledge of a breach on the part of the owner, shall in no event be deemed or construed to be a waiver or relinquishment of the right of the Declarant, the Association, or by any Member or Mortgagee to exercise its enforcement rights under this Section 5.02.

5.2. Amendment:

So long as Declarant owns a Lot, Declarant may, in its sole discretion, amend this Declaration so long as such amendment does not materially and adversely affect the interest of any Mortgagee or Lot owner. Thereafter this Declaration may be amended by written instrument signed by not less than three-fifths (3/5) of the Lot owners and all of the Mortgagees. Any amendment must be recorded and be executed by the duly authorized representative of the Association.

5.3. Severability:

If any provisions hereof shall be determined to be invalid or unenforceable, such determination shall not impair or affect the remainder of this Declaration, which shall remain in full force and effect.

5.4. Disclaimer of Responsibility for Security:

The Declarant and the Association shall not be responsible for security matters involving the Property or any Lot, and each Member, his guests and invitees shall be responsible for protecting his person and property.

6. DURATION

The covenants, restrictions, reservations and easements of this Declaration shall run with and be binding upon the Property and shall be and remain in effect, for a term of twenty (20) years from the date that this Declaration is recorded in the Dekalb County, Georgia records, and shall inure to the benefit of and be enforceable by (1) the Declarant, (2) the owner of any Lot subject to this Declaration, his legal representatives, heirs, successors, successors-in-title, transfers and assigns, (3) the Association or (4) any Mortgagee. After said twenty (20) year period, these covenants, restrictions, reservations and easements shall be automatically extended for successive periods of ten (10) years unless on or before the date which is one (1) year prior to the expiration date an instrument signed by not less than a majority of the then owners of the Lots has been recorded in the Dekalb County, Georgia records agreeing to change or terminate said covenants, restrictions, reservations and easements in whole or in part. Every purchaser or grantee of any interest in any property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees to be subject to the covenants, restrictions, reservations and easements of this Declaration. Even if any covenants, restrictions, reservations and easements contained herein are terminated, the Association, the Common Area, and the right to impose assessments, and the other matters not so terminated, shall remain in full force and effect.

7. PROPERTY ADDITIONS:

So long as Declarant owns a Lot, Declarant may, in its sole discretion, add additional property to be developed and made a part of the Property. Said property added to and made a part of the Property shall be governed by and adhere to the Declaration of Protective Covenants, Restrictions, Reservations, and Easements for Valley Brook.

IN WITNESS WHERE OF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

Signed, sealed and delivered  
In the Presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My Commission expires:

\_\_\_\_\_  
[NOTARY SEAL]

By: Rybert Properties, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
[CORPORATE SEAL]